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FIRST GENERAL COUNSEL'S REPORT

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MUR: 6464
DATE COMPLAINT FILED: 3/29/2011
DATE OF NOTIFICATION: 4/1/2011
LAST RESPONSE RECEIVED: 5/11/2011
DATE ACTIVATED: 6/10/2011

EXPIRATION OF SOL: 10/12/15 - 10/29/15

COMPLAINANT:

Lanneau H. Siegling, Sr.

RESPONDENT:

Democratic Party of South Carolina
a/k/a South Carolina Democratic Party¹ and
Dan D'Alberto, in his official capacity as
treasurer²

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(20)
2 U.S.C. § 431(21)
2 U.S.C. § 441i(b)
11 C.F.R. § 100.24
11 C.F.R. § 100.25
11 C.F.R. § 300.32(a)(2)

INTERNAL REPORTS CHECKED:

Disclosure Reports

OTHER AGENCIES CHECKED:

South Carolina Ethics Commission

I. INTRODUCTION

This matter involves allegations that the South Carolina Democratic Party ("SCDP" or "the Committee") violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by using soft money to pay for federal election activities. See 2 U.S.C. § 441i(b). Specifically, Complainant alleges that SCDP used nonfederal funds to make \$628,323.47 in disbursements for October 2010 "Party Development" communications.

¹ The Committee registered with the Commission under the name "Democratic Party of South Carolina," but it generally goes by "South Carolina Democratic Party" (e.g., on its website, communications, and invoices).

² The Committee notified the Commission of a change of treasurer on June 17, 2011, after the case was activated.

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1 In response, the South Carolina Democratic Party provided information showing that the
2 disbursements were made to support specific nonfederal Democratic candidates, and did not
3 constitute federal election activities. Accordingly, we recommend that the Commission find no
4 reason to believe that the South Carolina Democratic Party and Dan D'Alberto, in his official
5 capacity as treasurer, violated 2 U.S.C. § 441i(b) or the Commission's regulations.

6 **II. FACTUAL AND LEGAL ANALYSIS**

7 **A. Facts**

8 The South Carolina Democratic Party is a state party committee registered with the
9 Commission. SCDP files disclosure reports with the Commission and the South Carolina Ethics
10 Commission.

11 Complainant reviewed SCDP's 2010 Year End disclosure report filed with the South
12 Carolina Ethics Commission and asserts that eight disbursements totaling \$628,323.47, and
13 described in the disclosure report as "Direct Mail-Party Development" or "Direct Mail-Issue
14 Advocacy," appear to have been for federal election activities ("FEA"). See Complaint at 1-2
15 and attached disclosure report.

16 Complainant did not provide corresponding SCDP communications or mailings to show
17 that the disbursements were for FEA. However, in its response, SCDP provided copies of
18 communications and corresponding invoices for each disbursement. In a signed declaration,
19 SCDP's Executive Director explained that the seven "Party Development" disbursements were
20 for postage, production, or shipping for 19 direct mailings. The mailings advocated the
21 individual candidacies of South Carolina Democratic gubernatorial candidate Vincent Sheheen;
22 and Democratic state representative candidates Mia Butler, Tom Dobbins, Paige George, Mary
23 Bernsdorff, Judy Gilstrap, Tom Davies, and Sheila Gallagher. None of the mailings mention a
24 federal candidate. The communications are summarized in the table below:

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Date of Disbursement	Description of Disbursement	Nonfederal Candidate(s) Supported by Communication	Amount
10/29/10	Direct Mail—Party Development	Mia Butler (State Representative)	\$16,609.36
10/27/10	Direct Mail—Party Development	Vincent Sheheen (Governor)	\$32,491.13 ³
10/22/10	Direct Mail—Issue Advocacy	Vincent Sheheen (Governor)	\$500,000.00
10/21/10	Direct Mail—Party Development	Tom Davies, Tom Dobbins, Mary Bernsdorff, Sheila Gallagher, Judy Gilstrap (State Representatives)	\$7,958.79
10/21/10	Direct Mail—Party Development	Vincent Sheheen (Governor)	\$32,960.00
10/21/10	Direct Mail—Party Development	Tom Dobbins, Paige George, Mary Bernsdorff, Judy Gilstrap (State Representatives)	\$2,088.59
10/18/10	Direct Mail—Party Development	Vincent Sheheen (Governor)	\$33,611.37
10/12/10	Direct Mail—Party Development	Mia Butler (State Representative)	\$2,604.23
Total Amount			\$628,323.47

Each mailing either promoted a single Democratic state candidate, criticized a single Republican state candidate, or, in some cases, did both. Most of the ads urged voters to “elect” the particular Democratic state candidate. All but two of the mailers mentioned the November 2nd general election date. Two of the mailings exhorted voters to “Vote Tuesday November 2nd,” and a third exhorted voters, “On November 2nd, vote for [candidate].” However, none of the mailings generally promoted the Democratic Party or a slate of Democratic candidates. The mailings included disclaimers stating that they were “Paid for by the South Carolina Democratic Party” or otherwise included SCDP’s name and address.

The “Issue Advocacy” disbursement (\$500,000) was for a television advertisement critical of the Republican gubernatorial nominee, Nikki Haley. The ad ended with the

³ There is an unexplained \$468.87 discrepancy between the amount reported to the South Carolina Ethics Commission and the invoice for this disbursement, which shows a charge of \$32,960.

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1 catchphrase – “After years of scandal and embarrassment, tell Nikki Haley we need to restore
2 trust and integrity to Columbia.” *See* Response, Exhibit F. This ad, which aired between
3 October 25 and November 1, does not mention or show the November 2 election date or urge the
4 viewer to vote. *Id. See*
5 <http://www.youtube.com/user/SCDems?blend=1&ob=5#p/u/0/cNzr2n6xKR0>.

6 Complainant alleges that the amount of the disbursements, the “Party Development”
7 description, and the timing of the disbursements, suggest that the disbursements were for FEA -
8 either as generic campaign activity or voter registration activity.

9 Noting that the allegations are based purely on the description of the mailing
10 disbursements (and impliedly not on the content of the communications), SCDP asserts that
11 “Party Development” is a term of art in South Carolina for disclosing the nonfederal
12 disbursements. Response at 1. SCDP emphasizes that each disbursement was for
13 communications referencing solely nonfederal candidates and asserts that none of the
14 communications involved any FEA. *Id.* at 1-2.

15 **B. Legal Analysis**

16 State party committees are generally prohibited from using nonfederal funds to pay for
17 FEA. *See* 2 U.S.C. § 441i(b)(1); 11 C.F.R. § 300.32(a)(2). FEA includes (i) voter registration
18 activity during the period that begins on the date that is 120 days before the date a regularly
19 scheduled federal election is held and ends on the date of the election; and (ii) voter
20 identification, get-out-the-vote activity, or generic campaign activity conducted in connection
21 with an election in which a candidate for federal office appears on the ballot (regardless of
22 whether a candidate for state or local office also appears on the ballot). 2 U.S.C. § 431(20)(A);
23 11 C.F.R. § 100.24(b). The relevant FEA time period for voter registration activities was from
24 July 5, 2010, to November 2, 2010; it was from March 30, 2010, to November 2, 2010, for

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generic campaign activity and get-out-the-vote activity. *See*

http://www.fec.gov/pages/bcra/rulemakings/charts_fea_dates_2010.shtml.

Complainant surmises that the description, timing, and amounts of the SCDP disbursements indicate that they were either voter registration activity or generic campaign activity that would qualify as FEA. All of the alleged activity appears to have occurred in October 2010, within 30 days of the November 2, 2010, general election, and is within the relevant time period for the respective FEA categories. Although Complainant did not allege that any of the listed activities were get-out-the-vote activity, this possibility also is discussed below.⁴

1. Voter Registration Activity

During the 2010 election cycle, voter registration activity consisted of contacting individuals by telephone, in person, or by any other individualized means to assist them in registering to vote. *See* 11 C.F.R. § 100.24(a)(2). Voter registration activity included printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms. *Id.*

Neither the mailings nor the TV ad appears to constitute voter registration activity under the Commission's 2010 election cycle regulations. The communications do not qualify as an "individualized means to assist [voters] in registering to vote," and Complainant has not provided information showing that any of the disbursements were used to assist voters in registering to vote. The mailings urge voters to vote for specific nonfederal candidates on election day rather than assisting them to register to vote. Even the two communications that included the exhortation "Vote Tuesday November 2nd" do not amount to assisting voters to

⁴ In September 2010, the Commission revised its FEA regulations, including its definitions of "voter registration" and "get-out-the-vote" activities. *See* Final Rules: Definition of Federal Election Activity, 75 Fed. Reg. 55257 (Sept. 10, 2010). The new regulations, however, did not become effective until December 1, 2010, after the disbursements at issue.

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1 register to vote. *See* Explanation and Justification, 71 Fed. Reg. 8926, 8928-8929 (February 22,
2 2006) (mere exhortation or encouragement to register or to vote does not constitute voter
3 registration activity). The TV ad focused on the Republican gubernatorial candidate and did not
4 even include the word "vote."

5 2. Generic Campaign Activity

6 Generic campaign activity means a campaign activity or a public communication that
7 promotes or ~~opposes~~ a political party and does not promote or oppose a clearly identified federal
8 or nonfederal candidate. *See* 2 U.S.C. § 431(21); 11 C.F.R. § 100.25. Although the
9 communications qualify as public communications under the Act and Commission regulations,
10 *see* 2 U.S.C. § 431(22) and 11 C.F.R. § 100.26,⁵ it does not appear that any of the disbursements
11 or communications involved generic campaign activity. All of the communications promote or
12 oppose clearly identified nonfederal candidates and do not specifically promote or oppose a
13 political party.

14 3. Get-Out-The-Vote Activity

15
16 During the 2010 election cycle, get-out-the-vote activity ("GOTV") involved contacting
17 registered voters by telephone, in person, or by other individualized means, to assist them in
18 engaging in the act of voting. 11 C.F.R. § 100.24(a)(3); 71 Fed. Reg. 8926, 8928 (February 22,
19 2006). GOTV includes providing to individual voters information such as the date of the
20 election, the times when polling places are open, and the location of particular polling places,
21 and offering transport or actually transporting voters to the polls. 11 C.F.R. § 100.24(a)(3)(i) and
22 (ii). The SCDP communications do not appear to "assist [voters] in engaging in the act of
23 voting." Although many of the mailings include the date of the November 2, 2010, general

⁵ The TV ad appeared on broadcast television, and the invoices for the mailings indicate that they constitute mass mailings (over 500 pieces of each mailing were distributed within a 30-day period). *See* 2 U.S.C. § 431(23); 11 C.F.R. § 100.27. Thus, the TV ad and the mailers are public communications.

election, under the existing Commission regulations, mere inclusion of the election date in a communication, without further information regarding the hours or location of polling places, does not amount to assisting a voter and is insufficient to make a communication GOTV activity. See Advisory Opinion 2006-19 (Los Angeles County Democratic Party) at 4.⁶

4. Conclusion

The SCDP communications support specific nonfederal candidates and do not appear to constitute FEA under the Act or Commission's regulations. Therefore, we recommend the Commission find no reason to believe that the South Carolina Democratic Party and Dan D'Alberto, in his official capacity as treasurer, violated 2 U.S.C. § 441i(b)(1) or 11 C.F.R. § 300.32(a)(2).

III. RECOMMENDATIONS

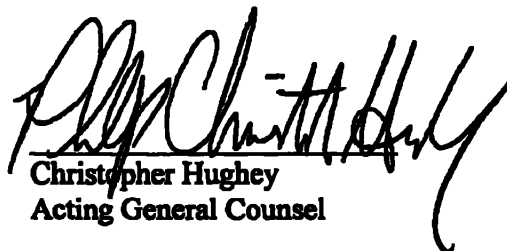
1. Find no reason to believe that the South Carolina Democratic Party and Dan D'Alberto, in his official capacity as treasurer, violated 2 U.S.C. § 441i(b)(1) or 11 C.F.R. § 300.32(a)(2) by making disbursements for federal election activity from funds not subject to the limitations, prohibitions, and reporting requirements of the Act;
2. Approve the attached Factual and Legal Analysis;
3. Approve the appropriate letters; and

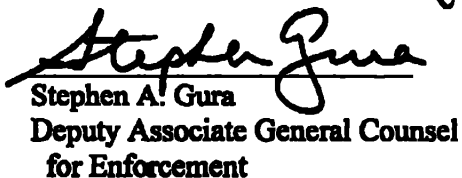
⁶ Although Advisory Opinion 2006-19 was superseded when the Commission adopted the new regulations that became effective on December 1, 2010, the reasoning cited above was still in effect during the activity at issue. See Final Rules: Definition of Federal Election Activity, 75 Fed. Reg. 55257, 55266 (Sept. 10, 2010). Further, under the new regulations, which do not apply here, the inclusion of the exhortation to vote (e.g., "Vote Tuesday November 2nd") would be exempt from the definition of GOTV because the exhortation was brief and incidental to the communications. See 11 C.F.R. § 100.24(a)(3)(ii).

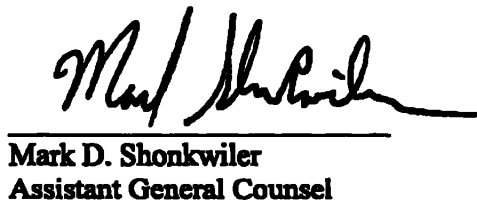
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4. Close the file.

8-25-2011
DATE


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